referred to as "Kaufman") in view of U.S. Patent Application Publication No. 2001/0049480 to John (hereinafter referred to as "John"); and rejected claims 56 and 57 under 35 U.S.C. 103(a) as being unpatentable over Kaufman in view of U.S. Patent No. 6,629,935 to Miller et al. (hereinafter referred to as "Miller"). In response, Applicants traverse the Examiner's rejections. No new matter has been added to this application.

Rejections under 35 U.S.C. §103

The Examiner rejected claims 42, 43, 45 – 52, 54, 55, and 58 as being obvious over Kauffman in view of John, and rejected claims 56 and 57 under 35 U.S.C. 103(a) as being unpatentable over Kaufman in view of Miller.

By this Response and Amendment, Applicants respectfully traverse the Examiner's rejection since the cited prior art does not disclose, teach or suggest all of the features of independent Claim 42, and thus of all claims remaining in the application dependent thereon. To establish a *prima facie* case of obviousness, the Examiner must show that the prior art references teach or suggest all of the claim features. *Amgen, Inc. v. Chugai Pharm. Co.*, 18 USPQ2d 1016, 1023 (Fed. Cir. 1991); *In re Fine,* 5 USPQ2d 1596, 1598 (Fed. Cir. 1988); *In re Wilson*, 165 USPQ 494, 496 (CCPA 1970).

1. The Amendments Filed February 28, 2007 Were Not Considered

Applicants respectfully note that in the Office Action, the Examiner does not refer to the current form of the claims. Rather, the Examiner refers to the previous version of the claims.

Claim 42 was amended to recite *inter alia* a "computer processor ... programmed to stop a collection of data after the recording of a predetermined number of faults and programmed to stop the collection of data after receiving an indication that the data collected is reliable" *emphasis added.*

Kauffman does not disclose, teach or suggest this feature. Previously, claim 42 recited disjunctive language by reciting "or" instead of "and." Now, however, the claim recites conjunctive language – "and." However, the Examiner ignored this amendment and restated his previous rejection. Accordingly, Applicants respectfully request that the Examiner withdraw the previous Office Action and examine the claims as submitted on February 28, 2008.

2. Computer Processor Configured Two Ways

In contrast to the presently claimed subject matter, Kauffman does not disclose, teach or suggest "a computer processor... programmed to stop a collection of data after the recording of a predetermined number of faults and programmed to stop the collection of data after receiving an indication that the data collected is reliable." As noted above, the Examiner considered the previous version of the claims; however, the current version of the claims requires that the prior art show a processor programmed to stop after collection of a predetermined number of faults and programmed to stop after a receiving an indication that data is reliable. This feature has not been shown to be present in the prior art. The Examiner cited column 3, lines 4 – 7 and column 12, lines 43 – 61 of Kauffman as disclosing this feature (before entry of the above amendments). However, these passages refer only to disengaging Kauffman's system upon sensing that a patient is not interacting with the system, e.g. turning to look at someone who enters the room. The system then allows re-engagement when the user generates the appropriate commands" such as "fixating on the cursor and winking twice."

As all of the features of the presently claimed subject matter are not disclosed, taught or suggested by the cited prior art, Applicants submit that the cited prior art does not render the presently claimed invention obvious. Accordingly, for at least this reason, Applicants respectfully request that the Examiner reconsider and withdraw the rejection.

3. Evoked Brain Potentials

Applicants renew the argument that the cited prior art does not disclose, teach or suggest a "means for detecting electrical signals representative of [a] patient's evoked brain potentials" (emphasis added) as recited in claim 42. The Examiner has not shown how electrode elements 20-30, 60-64, and 102, as cited in the Office Action, render this feature obvious.

As continuously noted, Kauffman is drawn to an "eye-tracking interface system." As clearly recited in the abstract, the system "includes a detecting device *adapted to detect bio-electromagnetic signals generated by eye movements*." (emphasis added) That is, Kauffman detects electrical signals corresponding to eye movements rather than brain activity. Kauffman makes no reference to evoked brain potential when describing the type of signals detected by the electrodes. *See e.g. Kauffman* at col. 6, lines 19 – 26. The text of the outstanding Office Action is conveniently missing the claim term "brain" from the rejection (*see June 4, 2008 Office Action* at pg. 2, para. 4 "means for detecting electrical signals representative of the patient's evoked potentials *sic*...").

Notwithstanding oversight of the claim term "brain," the Examiner is taking Official Notice that "bio-electromagnetic signals generated by eye movements" are equivalent to "evoked brain potentials." As such, pursuant to MPEP §2144.03, Applicants respectfully request that the Examiner provide documentary support for such Notice.

The language of claim 42 reciting "at least one electrode...configured to be placed over a visual cortex of a patient" supports the measurement of evoked brain potential. As Applicants have stated previously, the visual cortex is an area of the occipital lobe of the brain associated with vision, and the occipital lobe is located at the back of the head. None of figures 2, 3, or 5 of Kauffman show an electrode placed at the back of the head, and again, none of electrode elements 20-30, 60-64, and

102 are said to detect any brain signals whatsoever, let alone brain signals measured over the visual cortex of a patient.

As Kauffman does not disclose, teach, or suggest "means for detecting electrical signals representative of [a] patient's *evoked brain potentials,*" as recited in independent claim 42, Kauffman does not anticipate claim 42, nor any claim dependent therefrom. Accordingly, for at least this additional reason, Applicants respectfully request that the Examiner reconsider and withdraw the rejection.

CONCLUSION

In light of the foregoing, Applicants submit that the application is now in condition for allowance. If the Examiner believes the application is not in condition for allowance, Applicants respectfully request that the Examiner contact the undersigned attorney if it is believed that such contact will expedite the prosecution of the application.

In the event this paper is not timely filed, Applicants petition for an appropriate extension of time. Please charge any fee deficiency or credit any overpayment to Deposit Account No. 14-0112.

Respectfully submitted,
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